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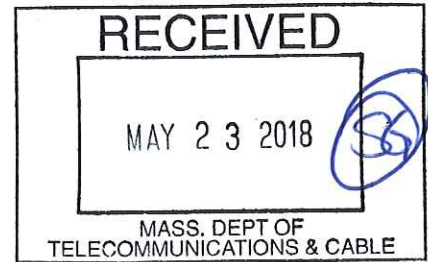
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May 23, 2018

VIA EMAIL

Ms. Shonda D. Green
Secretary
Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500
dte.efiling@mass.gov



RE: Petition of the State 911 Department for Approval of 2018 Fiscal Year Expenditure
and Adjustment of the Enhanced 911 Surcharge
DTC 18-2

Dear Ms. Green:

Enclosed for filing in the above matter, please find the comments of CTIA – The
Wireless Association®.

Please feel free to contact me with any questions.

Sincerely,

Geoffrey G. Why
Katie M. Gray
Attorneys for CTIA – The Wireless Association®

Enclosures

cc: Service List (via email)

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

Petition of the State 911 Department for
Approval of Fiscal Year 2018 Expenditures
and Adjustment of the Enhanced 911
Surcharge

D.T.C. 18-2

COMMENTS OF CTIA

Pursuant to the Massachusetts Department of Telecommunications and Cable's ("DTC's") April 18, 2018 Notice of Public Hearing, CTIA – The Wireless Association^{®1} submits these comments on the State 911 Department's April 10, 2018 petition ("Petition") seeking an increase in its budget and in the Enhanced 9-1-1 ("E911") surcharge.

I. INTRODUCTION

Just three years after proposing and receiving approval of a significant increase in the E911 fee, the State 911 Department now seeks to raise the E911 surcharge by 50%, from \$1.00 to \$1.50, to fund a budget increase of over 60%, from \$106,687,952 to \$171,224,995.²

The E911 system provides a critical public purpose: protecting public safety by ensuring the availability of seamless communications infrastructure for emergency services. CTIA and its member companies support appropriate, justifiable, and lawful funding for the Commonwealth's E911 system and improvements to that system, including Next Generation 9-1-1 ("NG911") implementation. CTIA is, however, concerned that the State 911 Department's significant proposed surcharge increase is not supported by adequate evidence and, at least in one instance,

¹ CTIA – The Wireless Association[®] ("CTIA") (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association's members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² Petition at 2, 6.

seeks funding for expenditures that are not statutorily eligible for support via E911 surcharge revenues.

As detailed further below, CTIA urges the DTC to: (1) deny the State 911 Department's request for funding for the Commonwealth of Massachusetts Interoperable Radio System ("CoMIRS"), which does not constitute a permissible E911 expenditure, and adjust any surcharge increase accordingly; (2) require that the State 911 Department put forth sufficient evidence to support its proposed expenditures and deny any unsupported expenditures; (3) review and adjust the E911 surcharge annually in order to minimize the potential harm of sudden substantial rate increases on customers; and (4) actively support legislation adopting a point-of-sale methodology for collecting E911 surcharges from prepaid wireless consumers.

II. THE DTC SHOULD DENY FUNDING FOR THE STATE 911 DEPARTMENT'S CoMIRS SYSTEM PROPOSAL, WHICH IS NOT ELIGIBLE FOR FUNDING THROUGH THE E911 SURCHARGE.

Based on the Petition, one reason for the State 911 Department's proposed significant surcharge increase appears to be related to funding CoMIRS. Specifically, the State 911 Department proposes replacing 30,000 CoMIRS radios at 245 state agencies, at an estimated total cost of \$130 million over six years.³ CoMIRS is not part of the E911 system, however, and is therefore ineligible for funding via E911 surcharge revenue.⁴ Accordingly, the DTC should deny that part of the proposal and the corresponding proposed surcharge increase.

A. CoMIRS Is Not an Eligible E911 Expenditure Under State Law.

Expenditures from the E911 Fund are strictly limited to specific categories defined by statute. G. L. c. 6A, § 18B(f) restricts E911 expenses to: (1) PSAP equipment; (2) network

³ The State 911 Department estimates that the upgrade of CoMIRS will cost \$5 million in Fiscal Year ("FY") 2018 and \$25 million annually in FYs 2019-2023.

⁴ G. L. c. 6A, § 18B(a) (defining scope of E911 system); *id.* § 18B(f) (limiting expenditures from E911 Fund to defined categories).

development, operation, and maintenance; (3) database development, operation, and maintenance; (4) training telecommunicators; (5) consumer education; (6) grants; (7) communications service provider reimbursement; and (8) the State 911 Department's expenses for administering and operating the enhanced 911 system. CoMIRS is not part of the E911 system, does not provide an E911 service, and is not a network component of the E911 system, and so it does not fall within any of these categories.

The E911 system consists of the equipment and databases associated with the 911 call path from the selective router to, and including, the PSAP.⁵ Enhanced 911 service consists "of communication network, database and equipment features provided for subscribers or end users of communications services *enabling such subscribers or end users to reach a PSAP . . . [and] that directs calls to appropriate PSAPs based on selective routing and provides automatic number identification and automatic location identification.*"⁶ The components of the "network" described in the "enhanced 911 systems" definition are "software or hardware . . . *used for selective routing of 911 calls, automatic number identification and automatic location information, including a PSAP.*"⁷

CoMIRS, while a valuable tool for maintaining public safety in the Commonwealth, is outside the E911 system. CoMIRS consists of statewide radio infrastructure managed by the Department of State Police that provides operable and interoperable radio communications for state agencies, municipalities, and first responders.⁸ In the State 911 Department's own words, it is "the primary statewide interoperable communications tool for PSAPs to communicate with

⁵ G. L. c. 6A, § 18A (defining E911 systems as "consisting of network routing elements serving as a control office and trunking connecting all central offices within a geographical segment, and including PSAPs and network used to deliver location data to PSAPs from a data base").

⁶ G. L. c. 6A, § 18A (emphases added).

⁷ G. L. c. 6A, § 18A.

⁸ Petition at 15.

public safety organizations and to arrange for timely dispatch of first responders to resolve 9-1-1 calls.”⁹ As such, CoMIRS handles calls from the PSAPs to third party responders, not calls from members of the public to the PSAPs, and therefore is not part of the E911 system that encompasses the call path from the selective router to the PSAP. It is, therefore, not included in the eligible funding categories, making it ineligible for funding through the E911 surcharge. Accordingly, the DTC should deny funding for the State 911 Department’s CoMIRS request, and correspondingly, ensure that any increase in the E911 surcharge is reduced to account for the removal of this request from the budget.

The lack of detail in the State 911 Department’s budget request also makes it impossible to discern whether other costs in the budget request are related in whole or in part to the CoMIRS funding request. (Additionally, a cost study identified as evidence in the Petition was not provided with the Petition.)¹⁰ The DTC should investigate whether other elements of the overall budget request are related to the ineligible CoMIRS funding request, and, if they are, should also deny such funding.

The E911 surcharge is funded exclusively by telecommunications consumers in Massachusetts, who will have to bear the burden of any significant increase in the size of the fund. Accordingly, to limit said burden, the DTC must scrutinize requested expenditures and limit them to the statutory boundaries set by the Legislature. If the Commonwealth desires to fund the replacement of the CoMIRS, it can do so through other means that are consistent with law.

B. CoMIRS Is Also Not an Eligible E911 Expenditure Under Federal Law.

The CoMIRS funding request also is not authorized under federal law. Federal law limits use of E911 surcharges to “support or implementation of 9-1-1 or enhanced 9-1-1 services,

⁹ Petition at 14.

¹⁰ Petition at 11-12.

provided that the fee or surcharge is obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services”¹¹ Both 9-1-1 and E911 services involve a call path from the selective router to a PSAP.¹² Moreover, the proposed CoMIRS replacement expenses would constitute the type of unauthorized expenditures that the Federal Communications Commission (“FCC”) vocally opposes. For example, in a recent editorial, FCC Commissioners Michael O’Rielly and Jessica Rosenworcel expressed concern that states are diverting 9-1-1 revenues to unrelated purposes, calling the practice “deceptive” and encouraging states to put a stop to it.¹³ Just as states may not spend E911 revenues on purposes unrelated to E911, E911 budgets may not be set using line items that do not fulfill the statutory purpose of E911.

Because not all of the CoMIRS budget item meets the requirements of state or federal law, the DTC must deny approval of those ineligible portions of the State 911 Department’s request.

III. THE DTC SHOULD REQUIRE THE STATE 911 DEPARTMENT TO PRESENT SUFFICIENT EVIDENCE TO JUSTIFY AN INCREASE IN THE E911 SURCHARGE.

In several areas, the State 911 Department has failed to present sufficient evidence to justify its proposed increase to the E911 surcharge. The DTC should require that the State 911 Department offer evidence to support increases to its budget line items. If the State 911 Department fails to offer sufficient evidence on any budget line item, the proposed budget for that line item should be denied.

¹¹ 47 U.S.C. § 615a-1 (f)(1).

¹² See *fn* 5.

¹³ Commrs. Michael O’Rielly and Jessica Rosenworcel, “States are stealing funds from 9-1-1 emergency services – now they’ll be punished.” *The Hill*, Feb. 9 2018, <http://thehill.com/opinion/technology/373043-states-are-stealing-funds-from-9-1-1-emergency-services-now-theyll-be> (last visited May 23, 2018).

A. The Petition Contains Insufficient Support for the Proposed NG911 Expenditures.

One item in particular that requires further supporting evidence is the State 911 Department's request for large increases in recurring and non-recurring NG911 expenditures. Under the proposal, NG911 non-recurring expenditures would grow from \$12,307,830 to \$29,970,363, and NG911 recurring expenditures would grow from \$7,845,236 to \$27,246,197.¹⁴ Together, these requested increases account for approximately 57% of the proposed incremental increase in the State 911 Department's budget for Fiscal Year 2018. However, the State 911 Department has provided limited details regarding these expenditures. For example, in its Petition the State 911 Department mentions, but does not provide evidence of, costs related to its 2014 contract with General Dynamics Information Technology for NG911.¹⁵ The Intervenor and the DTC should have access to these documents in order to enable a thorough review.

Moreover, the State 911 Department previously received approval for funding to construct the Commonwealth's NG911 system,¹⁶ and it is CTIA's understanding that the NG911 system already has been built. Accordingly, the DTC should scrutinize proposed expenses attributable to the NG911 system as those may have been included and approved in prior budget requests.

B. Prior to Approving Any Proposed Expenditures, the DTC Must Ensure that the State 911 Department Has Justified Their Necessity.

CTIA does not dispute that the State 911 Department has the authority to identify necessary expenditures for the provisioning of E911 Service, but the law also requires the DTC to ensure that requested expenditures are reasonable and justified.¹⁷ Every effort should be taken to ensure transparency for the wireless consumers whom an increased surcharge would burden, and to

¹⁴ Petition at Ex. A.

¹⁵ Petition at 13.

¹⁶ See Final Order *re* Petition of the State 911 Department to Adjust the Enhanced 911 Surcharge, D.T.C. 15-2 (June 18, 2015) ("2015 Surcharge Order").

¹⁷ M.G.L. ch.6A §18H(b).

minimize that burden. Exacerbating this issue is the fact that this is the second time in three years that the State 911 Department has requested a significant E911 surcharge increase through a petition containing insufficient supporting evidence.¹⁸

Before approving the Petition, the DTC should ensure the State 911 Department has presented sufficient and specific evidence to justify the need for such a large increase in the E911 surcharge. This evidence should include, at a minimum:

- Budgetary and cost analyses addressing the current financial status of the E911 fund, including testimony from the State 911 Department;
- An economic justification for the major increase to the E911 surcharge on Massachusetts wireless consumers in 2016, and how the new surcharge amount was derived;
- Any economic justification for maintaining an increased surcharge after upgrades are completed, including an assessment of cost savings provided by NG911 deployment;
- Specific details regarding the State 911 Department's plans for its implementation of NG911 in the Commonwealth of Massachusetts, and detailed breakdowns of the costs associated with that implementation; and
- Justification for the significant (and increasing) surplus contained in the State 911 Department's proposed budget.¹⁹

¹⁸ See Comments of CTIA – The Wireless Association re: Petition of the State 911 Department for Adjustment of the Enhanced 911 Surcharge, D.T.C. 15-2 (filed April 29, 2015) (“2015 CTIA Comments”).

¹⁹ The State 911 Department's projected budget for FY2017, supported by a previous significant surcharge increase, was expected to produce a surplus of \$49.8 million. However, at the end of FY2017, that surplus was actually \$122.6 million – 246% of the original projection – suggesting the surcharge increase was significantly oversized. Further, the projected budget for FY2018 maintains a \$55.2 million surplus, the size and importance of which are unexplained. See Petition at Exhibit A.

The DTC should require this information from the State 911 Department to allow the DTC and stakeholders to evaluate the Petition based on factual evidence, and to provide transparency to the consumers who will bear the burden of any surcharge increase. If the State 911 Department is unable to provide these details and justification, the DTC should use its authority to deny approval of unsupported expenditures.

IV. IF AN INCREASE IS JUSTIFIED, THE DTC SHOULD ASSESS AND ADJUST THE E911 SURCHARGE ANNUALLY TO ENSURE THE MINIMUM NECESSARY ECONOMIC BURDEN ON CONSUMERS.

The proposed significant increase in the E911 surcharge for the second time in three years should give the DTC pause and incent the DTC to minimize the potential burden to customers of substantial, sudden rate increases. The economic impact of an E911 surcharge increase is particularly acute for Massachusetts consumers because the Massachusetts E911 surcharge is already one of the highest in the nation.²⁰ Fewer than five states have E911 surcharges higher than the proposed surcharge.²¹

Given the significant impact of a 50% surcharge increase on Massachusetts' consumers (100% in the last three years), if the DTC chooses again to approve an increase in the E911 surcharge, it should, consistent with the principles outlined by the DTC in response to the previous surcharge petition, reassess the surcharge level annually and decrease the surcharge as necessary to ensure that the State 911 Department is supported appropriately and at a minimum burden to consumers.²² This will allow the DTC and the State 911 Department to set the surcharge based on timely budgetary data, rather than an arbitrary estimate that, according to the State 911 Department's own figures, will produce a significant excess surplus.²³

²⁰ See National Emergency Number Association, 9-1-1 Surcharge – User Fees by State, <https://www.nena.org/?page=911RateByState> (last visited May 17, 2018).

²¹ See *id.*

²² See 2015 Surcharge Order at 31-37.

²³ See *fn 19*.

V. TO BRING THE E911 SURCHARGE INTO CONFORMITY WITH THE 911 STATUTE, THE DTC AND THE STATE 911 DEPARTMENT SHOULD ENCOURAGE THE LEGISLATURE TO ADOPT POINT OF SALE METHODOLOGY LEGISLATION FOR PREPAID WIRELESS SERVICE.

As CTIA noted in its comments regarding the State 911 Department's 2015 budget request, the current E911 surcharge collection method for prepaid wireless service, as currently prescribed, fails to conform to Massachusetts law.²⁴ The law requires that the surcharge collection methodology be an "equitable and reasonable" method remitting and collecting the E911 surcharge from users of prepaid wireless service.²⁵ The Department's current methodology fails to meet this standard. A point-of-sale collection methodology for prepaid wireless is necessary to ensure the collection and remittance is equitable and reasonable.

Many Prepaid wireless customers have no direct and ongoing billing relationship with prepaid wireless providers. The lack of a billing relationship between providers and customers means that accurate collection of the surcharge from prepaid wireless subscribers on a monthly basis is not feasible. As a result, instead of assessing end users of the service as required by statute, the State 911 Department's regulations require prepaid wireless providers to pay the surcharge from their own revenues using the prepaid formula methodology.²⁶

Further, since the last time CTIA identified this issue for the DTC and the State 911 Department, a new federal law has gone into effect that makes it unlawful for states to require any party to collect 911 surcharges when there is no associated financial transaction between the customer and that party.²⁷ This law prevents the Commonwealth from requiring prepaid providers

²⁴ See 2015 CTIA Comments at 7-9.

²⁵ G. L. c. 6A, § 18H(a) ("For prepaid wireless service, the department shall promulgate regulations establishing an equitable and reasonable method for the remittance and collection of the surcharge or surcharge amounts for such service.")

²⁶ *Id.* ("There shall be imposed on each subscriber or end user whose communication services are capable of accessing and utilizing an enhanced 911 system, a surcharge in the amount of 75 cents per month...")

²⁷ See Wireless Telecommunications Tax and Fee Collection Fairness Act, 47 U.S.C.A. § 1510 (2018).

to collect E911 surcharges from their customers when the prepaid provider is not selling directly to end users (*i.e.* when there is no financial transaction between the customer and the prepaid wireless provider). Without such collection, E911 contributions from prepaid providers will diminish considerably, potentially threatening E911 funding or inequitably overburdening other consumers if their surcharges are increased to make up any shortfall.

A lawful, more accurate, equitable, and reasonable approach for collection of the E911 surcharge from prepaid wireless services would be to require collection of the assessment at the point of sale. The vast majority of states (forty states, Puerto Rico, the District of Columbia, and the U.S. Virgin Islands)²⁸ already provide for a point-of-sale collection method for 911 surcharges, but Massachusetts does not. Two bills currently before the Massachusetts Legislature propose to authorize point-of-sale collection of the E911 surcharge.²⁹ The DTC and the State 911 Department should strongly urge the Legislature to vote in favor of such legislation.

VI. CONCLUSION

While CTIA and its member companies support appropriate funding for the Commonwealth's E911 system and improvements to that system, that funding must be limited to legally authorized expenditures and tailored to avoid any excess surplus, which would place an unjustified economic burden on the Massachusetts wireless consumers who support that system. The DTC should therefore: (1) deny any requests for funding, such as the CoMIRS request, that are not eligible for E911 funding and adjust any surcharge increase accordingly; (2) require that the State 911 Department put forth appropriate and sufficient support for its proposed expenditures and deny those expenditures for which the State 911 Department fails to provide sufficient support;

²⁸ National Conference of State Legislators, Prepaid Point of Sale Status (Apr. 17, 2017), <http://www.ncsl.org/research/telecommunications-and-information-technology/prepaid-point-of-sale-status.aspx> (last visited May 17, 2018).

²⁹ 2017 House Doc. No. 2361; 2017 House Doc. No. 1238.

(3) implement regular annual adjustments to the E911 surcharge to reduce the potential for rate shock; and (4) actively support state legislation that would bring Massachusetts in line with the vast majority of states by enabling point-of-sale collection of the E911 surcharge in the Commonwealth.

Respectfully submitted May 23, 2018.

/s/ Benjamin J. Aron

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